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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,172	09/17/2003	John W. Schnell	PTG 02-103-7	6313
23531	7590	12/01/2004	EXAMINER	
SUITER WEST PC LLO 14301 FNB PARKWAY SUITE 220 OMAHA, NE 68154			CHUKWURAH, NATHANIEL C	
		ART UNIT		PAPER NUMBER
		3721		

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/665,172	SCHNELL ET AL.
Examiner	Art Unit	
Nathaniel C. Chukwurah	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 17 September 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-50 is/are pending in the application.
4a) Of the above claim(s) 14-36 is/are withdrawn from consideration.
5) Claim(s) 1-13 is/are allowed.
6) Claim(s) 37,39,40,42,43 and 47-50 is/are rejected.
7) Claim(s) 38,41 and 44-46 is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a))

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/11/2003.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ .
5) Notice of Informal Patent Application (PTO-152)
6) Other: ____ .

DETAILED ACTION

Applicant elects group I, claims 1-13 with traverse; and further applicant's remarks that group II, claims 37-50 is closely related to group I, claims 1-13 is reconsidered and will also be examined.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 37, 39, 40, 42, 43 and 47-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oda (US 5,322,189) in view of Chen (US 6,431,428).

Oda discloses articulating pusher assembly (14) comprising: means (13) for coupling with nail loading assembly; means (14a) for engaging a nail, and coupled to nail loading assembly.

Regarding claim 39, Oda discloses articulating pusher assembly as discussed above, pivotally coupled to the operating member (13).

Regarding claim 40, Oda lacks adjustable angle magazine. However, Chen discloses an adjustable angle magazine (20). Therefore, it would have been obvious to one skilled in the art to make the magazine of Oda adjustable, as taught by Chen in order to rotate the magazine to a desires angle relative to the barrel of the nail gun (col.1, lines 36-37).

Regarding claim 42, Oda's articulating pusher assembly is capable of pushing the lead nail and place it nail barrel.

Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oda in view of Kimura (US 5,842,625).

Regarding claim 43, Oda lacks nail checker assembly. However, Kimura teaches a nail checking in a supply magazine (col. 3, lines 62-63).

Therefore, it would have been obvious to one skilled in the art to include in the magazine of Oda s nail checking assembly in a supply magazine, as taught by Kimura in order to visually check nail feeding condition and the number of residual nails in the magazine.

Regarding claim 47, Oda teaches end-loading magazine where element (6) is detached to allow user to load the nail stripes.

Regarding claim 48, modified Oda is deemed to include a modular adjustable angle magazine.

Regarding claim 49, Oda's nail gun is pneumatic as shown in Figure 1.

Regarding claim 50, Oda's nail gun is deemed to comprise clutch assembly.

Allowable Subject Matter

Claims 1-13 are allowed.

Claims 38, 41, 44-46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathaniel C. Chukwurah whose telephone number is (571) 272-4457. The examiner can normally be reached on M-F 6:00AM-2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nc



Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700